

## WAIVER OF SERVICE OF SUMMONS

TO: CHIK22112 OTTATT

(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, 1<sup>st</sup> mobile Technologies, acknowledge receipt of your request  
(DEFENDANT NAME)CHIK22112 OTTATTthat I waive service of summons in the action of 1<sup>st</sup> mobile Technologies,  
(CAPTION OF ACTION)which is case number Case #10 CIV 07296 CM in the United States District Court  
(DOCKET NUMBER)for the Southern District of New York.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an

answer or motion under Rule 12 is not served upon you within 60 days  
after

07 March 2011,  
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

3/15/2011

(DATE)

Joshua A. Lorentz

(SIGNATURE)

Printed/Typed Name: Joshua A. LorentzAs Attorney  
(TITLE)of First mobile Technologies  
(CORPORATE DEFENDANT)

## Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must with Number specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKCH7K12212 Ottawa

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -

1st mobile Technologies10 Civ. 07296 (CM) DEF

## AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, CH7K12212 Ottawa, declare under penalty of perjury that I haveserved a copy of the attached 2<sup>nd</sup> Amended Complaint  
1st mobile Technologies (document you are serving)upon William H. Katz <sup>ATTORNEY FOR PLAINTIFF</sup> whose address is 1013  
(name of person served)CONSHOHOCKEN RD SUITE 312, PA 19428 § 399 PARK RUE, NY, NY  
(where you served document)by UPS AND USPS

(how you served document: For example - personal delivery, mail, overnight express, etc.)

03/07/11Dated: NEW YORK, NY  
(town/city) (state)Ottawa

Signature

1035 Clarkson Avenue, Suite 5A  
AddressBrooklyn, New York  
City, State11212  
Zip Code718 581 4525  
Telephone Number

## Shipment Receipt: Page #1 of 1

THIS IS NOT A SHIPPING LABEL. PLEASE SAVE FOR YOUR RECORDS.

## SHIP DATE: THIS IS NOT A SHIPPING LABEL. PLEASE SAVE FOR YOUR RECORDS.

Non, Mar 7, 2011

## SHIPMENT INFORMATION:

UPS Ground Commercial  
0.50 lbs actual wt  
1.00 lbs billable wt  
Dims: 1.00x1.00x1.00

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CHINATOWN STA.

NEW YORK, New York

100139991

3558250004-0093

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03/07/2011 (212)349-8264 11:47:02 AM

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Sales Receipt

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Product

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Description

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Sale Unit

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Final

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Price

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EXPECTED DELIVERY DATE: TUES, MAR 8, 2011 EOD

SHIP FROM: CHIKEZIE OTTAH  
105 CLARKSON AVE  
APT 5A  
BROOKLYN NY 11212-1412  
(718) 581-4539

Tracking Number: 12149X120130209130  
Shipment ID: MAXOPFH90EY38  
Ref 1: -  
Ref 2: -

SHIP TO: FIRST MOBILE TECHNOLOGIES  
LEGAL DOCUMENTS  
1013 CONSHOHOCKEN RD  
STE 312  
CONSHOHOCKEN PA 19422-1034

SHIPMENT CHARGES:  
Ground Commercial \$7.47  
Service Options \$0.00  
Fuel Surcharge \$0.49

SHIPPED THROUGH: United Parcel Service  
United Parcel Service  
BROOKLYN NY 11236  
(800) 742-5877

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DOCUMENT

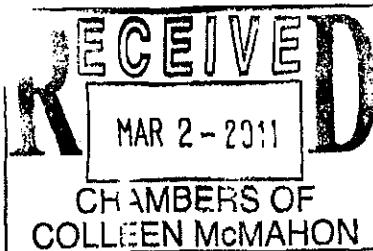
TRANSCA

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FILED: 3/3/11

March 1, 2011

Hon. Colleen McMahon  
 United States District Judge  
 United States District Court, Southern District of New York  
 500 Pearl St.  
 New York, NY 10007-1312



WILMERHALE

Cosmin Maier

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+1 212 230 8888 (F)

cosmin.maier@wilmerhale.com

MEMO ENDORSED

Re: *Chikezie Ottah v. First Mobile Technologies*, Case No. 1:10-cv-07296-CM (S.D.N.Y.)

Dear Judge McMahon:

This firm represents Defendant First Mobile Technologies ("FMT") in the above-captioned matter. On January 14, 2011 this Court held an Initial Pretrial Conference, wherein it dismissed Plaintiff Chikezie Ottah's ("Ottah") first amended complaint in the above-referenced matter without prejudice. The Court also granted Ottah the opportunity to prepare and file a new complaint, but instructed him to plead his cause of action with particularity. On the same day, the Court entered a Minute Entry (attached as Exhibit 1) dismissing Ottah's first amended complaint and giving Ottah until February 18, 2011 to "draft a new complaint and to send that complaint to First Mobile and its attorneys." Further, the Court stated that "[t]he new complaint should also be filed with the Court."

On January 31, 2010, FMT received several documents, including a document titled "Amendment Complaint," bearing the case number listed above. For the convenience of the Court, the documents mailed to FMT by Ottah are attached as Exhibit 2. The documents included a Request for Waiver of Service. Counsel for FMT received the same documents on February 28, 2011. According to the Clerk's Office, no corresponding complaint has been filed with the Court in the above-captioned case or any other case. While FMT is willing to waive service of the complaint, it believes that such complaint must be filed with the Court before it can technically waive service.

FMT seeks guidance on how to proceed in this matter. FMT suggests that the Court instruct the parties as follows, in accordance with the Court's January 14, 2011 Initial Pretrial Conference and Minute Entry:

3/2/2011  
 I instruct the parties to proceed as suggested by MOST to proceed as suggested by MOST  
 FMT. Mr. Ottah you give your amended complaint to your counsel  
 give your first other side

Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, New York 10022  
 Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

USDOCS 7866861v1

3/3/11 *Copies mailed/mailed/handed to counsel on 3/3/11*